is pending and the plaintiff is empowered to sue for and recover payment thereof in this court. (see *Comptroller of Income Tax* v. *R.S.T.*;[2] *Comptroller of Income Tax* v. *A. Co. Ltd.*;[3] *Sun Man Tobacco Co. Ltd.* v. *Government of Malaysia*[4]).

As I have said this is not an ordinary case. Here is a case where clearly the plaintiff is entitled to judgment.

Before the coming into operation of section 86 it was provided in section 85 (which has been repealed) that "collection of tax shall, in cases where notice of an objection has been given, remain in abeyance until such objection or appeal is determined." When section 85 was repealed and section 86 was enacted it was clearly the intention of the legislature that collection of tax should not be held over pending the determination of the appeal and to make provision for the speedy collection and recovery of taxes.

It seems to me that in this case to allow a stay would defeat the clear intention of Parliament and every unwilling taxpayer can circumvent section 86 by just lodging an objection and thereby causing considerable delay in the collection of the tax. The proper course for every aggrieved taxpayer is to pay his tax and present his arguments against the assessment made upon him before the board.

The case of *Norper Investments* was decided on the circumstances of that case. In that case when the Commissioner rejected the objection to the assessment the company requested the Commissioner to treat the objection as an appeal and to forward it to the Supreme Court. The Commissioner failed to comply with his statutory duty to refer the company's objection to the Supreme Court. Instead he issued a petition out of the Supreme Court for the winding-up of the company, not a writ to enforce the assessment. The court undoubtedly has a discretion whether to make a winding-up order. The court held that it would be "not just" to make a winding-up order in circumstances where the petitioner was in breach of his duty under the Income Tax Assessment Act and that the petition was oppressive and the proceedings, therefore, an abuse of process and the court dismissed the petition with costs.

I have given this case my full consideration and I have come to the conclusion that the defendant's application for a stay of proceedings in the action must be refused.

The motion is dismissed with costs.

Motion dismissed.

Solicitors: *Donaldson & Burkinshaw.*

THE "COURAGEOUS COLOCOTRONIS" E.M.J. COLOCOTRONIS & ORS. v. EUROPEAN AMERICAN BANKING CORPORATION & ORS.

[O.C.J. (Kulasekaram J.) May 25, 1978]
[Singapore — Admiralty in Rem No. 472 of 1977]

Practice and Procedure — Arrest of ship — Affidavit defective — Nature of claim not disclosed in affidavit leading to warrant of arrest — Arrest a nullity — Amended writ — Similar claim — R.S.C. 1970, O. 2, O. 70 r. 4(6)(b).

Shipping Law — Arrest of ship — Nature of claim not disclosed in affidavit leading to warrant of arrest — Arrest a nullity — R.S.C. 1970, O. 2, O. 70 r. 4(6)(b).

The plaintiffs issued a warrant of arrest against the ship "Courageous Colocotronis" on November 22, 1977. The affidavit leading to the warrant of arrest alleged that the plaintiffs were the sole beneficial owners of the said vessel as they held all the shares of "Navegantes" a company which was the registered legal owner of the said vessel. The defendant bank were a New York banking corporation which had financed "Navegantes" in the sum of US$6,600,000 on a loan agreement for the purchase of the said vessel supported by the mortgage of the ship by "Navegantes" to the defendants and in addition the personal guarantee of the plaintiffs. They had entered a conditional appearance and sought to have the writ struck out on the grounds, *inter alia*, that the writ, affidavit leading to the warrant of arrest and the warrant of arrest were defective in law. Another corporation, U.M.T.T. who claimed to be the present owners of the said vessel having purchased it from R.T.C. who had in turn purchased it from "Navegantes" also entered a conditional appearance and made a similar application to that of the defendant bank. The plaintiffs applied to amend the writ of summons and this was granted. The amended writ stated that the plaintiffs as shareholders of the company "Navegantes" brought the action for the benefit of the company for a declaration that the said vessel was legally owned by the company.

Held, setting aside the warrant of arrest: (1) Order 2 of the Rules of the Supreme Court, 1970 was designed to save rather than destroy and to cure that which was capable of cure in matters arising out of non-compliance with the rules provided the failure to comply with the rules was not so serious as to be contrary to natural justice and to render the proceedings in which they occurred or any order made under it a nullity;

(2) the statement of the nature of the claim in the affidavit leading to the warrant of arrest in this case was bad in law. The affidavit should state the nature of the claim of the plaintiffs as the defendants whose interests in the ship would be affected by the arrest and detention of the ship should know why their rights and interests were being invaded;

(3) in this case the nature of the plaintiff's claim was not brought home to the defendants at the time of the arrest. The issue of a warrant of arrest under such circumstances would be contrary to natural justice.

Cases referred to:-

(1) *The "Hoe Lee"* [1970] 1 M.L.J. 45.
(2) *In re Pritchard, deceased* [1963] 1 Ch. 502.
(3) *The "Simba"* [1970] 1 M.L.J. 121.

ADMIRALTY *IN REM.*

Denis Murphy (*Raj Kumar* with him) for the plaintiffs.

P. Selvadurai for the European American Banking Corporation.

S. Selvadurai for United Maritime No. 2 Tanker Transport Inc.

Kulasekaram J.: The plaintiffs Minos Colocotronis and his 2 nephews Alexander Georgiadis and Antony Georgiadis commenced an Admiralty Suit in Rem No.

472/1977 on October 27, 1977 and the ship "Courageous Colocotronis" of the port of Piraeus now known as the "Atlantic Conqueror" of the Port of Monrovia (hereinafter referred to as the said vessel) lying at a dockyard in the Port of Singapore, was arrested on November 23, 1977 on a Warrant of Arrest issued on November 22, 1977.

In the affidavit leading to the warrant of arrest Mr. Loh Boon Huat, solicitor acting for the plaintiffs, had stated that plaintiffs' claim is for a declaration that they are the sole beneficial owners of the said vessel and had also exhibited an affidavit sworn by Minos Colocotronis on behalf of himself and the two other plaintiffs on November 3, 1977 at London. In that affidavit Minos Colocotronis stated that the plaintiffs are the sole beneficial owners of all the issued and outstanding shares of Navegantes Universal SA (hereinafter referred to as "Navegantes"), a Panamanian Corporation, which were the registered owners of the said vessel. The Navegantes owned just this vessel.

The defendants, the European-American Banking Corporation, (hereinafter referred to as EABC) are a New York banking corporation which financed "Navegantes" in the sum of US$6,600,000 on a loan agreement for the purchase of the said vessel supported by the mortgage of the ship by "Navegantes" to EABC and in addition the personal guarantees of the plaintiffs.

The defendants EABC entered a conditional appearance and applied by way of motion to have the writ of summons and all subsequent proceedings struck out on the grounds: —

(a) That they are frivolous or vexatious, alternatively.

(b) That they are an abuse of the process of the court.

(c) That the writ, affidavit leading to the warrant of arrest and the warrant of arrest herein are defective in law.

Another corporation called the United Maritime No. 2 Tanker Transport, Inc. (hereinafter called "UMTT") who claimed to be the present owners of the said vessel having purchased the said vessel from Reefer Transportation Company who had in turn purchased it from "Navegantes" also entered a conditional appearance and made a similar application to that of the defendants EABC, on similar grounds.

Both these motions were heard together and I propose to deal first of all with the ground that the writ, the affidavit leading to the warrant of arrest and the warrant of arrest herein were defective in law.

It is the contention of the defendants that the affidavit leading to the warrant of arrest was defective in that it did not comply with Order 70 rule 4(6)(b). This rule reads:

"(6) Every affidavit must state:—

(a) ....

(b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied."

The affidavit leading to the warrant of arrest alleges that the plaintiffs claim to be the beneficial owners of the said vessel on the basis that they hold all the shares of "Navegantes" the company which is the registered legal owner of the said vessel. In the absence of any further allegation or circumstances this bare claim by the plaintiffs is not a proper one in law. If that were so it would amount to the plaintiffs not having disclosed the nature of their claim in the affidavit. It is submitted by the defendants that such non-compliance of the rule would render the warrant of arrest a nullity and not an irregularity which could be cured and they rely on the decision in *The "Hoe Lee"*.[1]

Mr. Murphy for the plaintiffs submitted that the *"Hoe Lee"* decision was based on our old Order LXIII rule 1 of the 1934 Rules of the Supreme Court which was the same as the old English Order 70 rule 1 before it was revised in 1962.

The distinction between irregularity and nullity has been removed by Order 2 of our present 1970 Rules of the Supreme Court as has been the case in England since 1965 when their new rules were brought into force. It must be remembered that *In re Pritchard, dec'd.*,[2] on which the *"Hoe Lee"* decision was based was good authority to follow in Singapore as we were then still on the old rules but it was not so in England which had by then adopted their new rules. This also explains certain remarks to which I was referred to in *The "Simba"*[3] decision, which was decided about the same time.

Mr. Murphy submitted that the provisions of Order 2 of the rules were designed to save rather than destroy and to cure that which was capable of cure in matters arising out of non-compliance with the rules. This I agree would generally be the position provided the failure to comply with the rules is not so serious as to be contrary to natural justice and to render the proceedings in which they occur or any order made under it a nullity.

During the hearing of these two motions at the end of the day's hearing on January 19, 1978 Mr. Murphy applied to amend the writ of summons in terms of a draft he submitted and his application was granted. The original endorsement of claim on the writ of summons read:

"The plaintiffs' claim is for a declaration that they are the sole beneficial owners of the vessel 'Courageous Colocotronis' of the port of Piraeus."

and the amended endorsement now reads:

"The plaintiffs as beneficial owners of the vessel 'Courageous Colocotronis' otherwise known as 'Atlantic Conqueror', the legal title to the said vessel being held by Navegantes Universal S.A. of Panama ('The Company') as trustees and/or nominees and/or agents for the plaintiffs, claim:

(A) A declaration that they are the beneficial owners as aforesaid;

(B) Alternatively, declaration that

(1) as shareholders of the Company they are entitled to bring and prosecute this action for the benefit of the Company, and

(2) the said vessel is legally owned by the Company;

(C) A declaration that the defendants are neither the legal nor beneficial owners of the said vessel, and

(D) An order restraining the defendants by themselves, their servants or agents or howsoever otherwise from exercising or purporting to exercise the rights of the legal or beneficial owners of the said vessel or of the persons entitled to possession of the same and/or from selling or attempting or purporting to sell or otherwise dealing with the said vessel;

(E) Such further or other relief as to the court seems just."

Mr. Murphy submitted that once the writ has been amended the amendment would be effective from the original date of the writ. He further submitted that the defect, if any, in the affidavit leading to the warrant of arrest would be cured by the amended writ because the declarations asked for alternatively under head (B) would give rise to a new claim. The plaintiffs here as the shareholders of the company ("Navegantes") are bringing this action for the benefit of the company for a declaration that the said vessel is legally owned by the company.

Mr. Murphy further contended that if the defendants had opposed his application for amendment on the ground that the new claim would not be covered by the original arrest then he would have taken steps to re-arrest the ship as the ship was still in Singapore on January 19, 1978. The said vessel had since been released on January 26, 1978 on the defendants providing satisfactory security. He contended that to say now that the original arrest would not cover the new claim in the endorsement of the amended writ would do the plaintiffs an injustice as he would not be able to re-arrest the said vessel as it had been released.

Even if Mr. Murphy were right in his first contention that the amended writ of summons is effective from the original date of the writ and the endorsement on the writ of summons could cure the defect in the affidavit leading to the warrant of arrest I cannot agree with his other contention that the declarations asked for alternatively under head (B) there gives any notice to the defendants that the plaintiffs' nature of claim is any different from their original one. I say this because the opening words in the amended endorsement reads thus:

"The plaintiffs as beneficial owners of the vessel 'Courageous Colocotronis' otherwise known as 'Atlantic Conqueror', the legal title to the said vessel being held by Navegantes Universal S.A. of Panama ('The Company') as trustees and/or nominees and/or agents for the plaintiffs, claim:"

They clearly qualify all the declarations and orders asked for below it under heads (A) to (E). The plaintiffs still claim as beneficial owners of the said vessel for these declarations and orders. At any rate the defendants are entitled to read that endorsement of claim in that manner and not as suggested by Mr. Murphy.

I find the statement of the nature of the claim in the affidavit leading to the warrant of arrest bad in law. The claim of the plaintiffs there was that they were the beneficial owners of the said vessel on the basis that they owned all the shares of "Navegantes", the company, which was the registered legal owner of the said vessel. The effect is that this affidavit leading to the warrant of arrest has not stated the nature of the plaintiffs' claim.

In my opinion the requirement that the affidavit leading to the warrant of arrest should state the nature of the claim of the plaintiffs is far too important a requirement as the defendants whose interests in the ship or property would be affected by the arrest and detention of the ship should know why their rights and interests are being invaded. Moreover there was nothing in the endorsement on the writ which could have cured this omission. The statement of claim was not filed till much later on January 31, 1978 and I shall deal with it in due course. The nature of the plaintiffs' claim was not brought home to the defendants here at the time of the arrest. The issue of a warrant of arrest under such circumstances would be contrary to natural justice and in my view renders the warrant of arrest a nullity.

I shall therefore set aside the warrant of arrest and all subsequent proceedings. This would dispose of both the motions but as the other two grounds of the applications were also argued before me at some length I shall very briefly set out my views on them.

It would be convenient to give a brief history of the transactions and dealings that took place between the plaintiffs and EABC during the relevant period.

The plaintiffs apart from the "Navegantes" also held all the shares or virtually all the shares in 20 other one-ship Panamanian Companies. The EABC also financed each of these 20 companies for the purchase of each of the 20 ships during the period 1972 to 1975. The loan agreements in respect of every one of these loans were supported by the mortgage of the particular ship by the company that owned it and everyone of those loans was further guaranteed by the personal guarantees of the plaintiffs.

These 21 ships in all formed the Colocotronis fleet which was controlled by the Colocotronis family and the EABC has in all advanced over 130 million US dollars for the Colocotronis group of companies. Towards the end of 1975 the shipping market broke and the Colocotronis group ran into financial difficulties and they required further loans to meet the running expenses of these ships.

In December 1975 at the Pierre Hotel, New York, the EABC and the Colocotronis group held a meeting. The EABC wanted further securities for further loans and so the Colocotronis group pledged all the shares, which were all bearer shares of the 21 shipping companies with the EABC and each one of these companies executed powers of attorney in favour of the EABC enabling EABC to act on behalf of the companies. Thus the EABC gained complete control over all the 21 companies and in that manner over all the ships though for the time being they still allowed the Colocotronis group to control and manage the running of these ships without any interference from them.

Soon disputes arose and by October 1976 the EABC started calling in the loans. They sold some of the ships with the co-operation of the Colocotronis group by way of realising their securities. In January 1977 the EABC sued the three plaintiffs along with one other in the English Courts on the personal guarantees that they had executed to support all the loans made by the EABC to the Colocotronis companies.

In May 1977 the Colocotronis group retaliated. First in their defence to EABC's action in the English Courts they raised 2 main matters: —

(1) That EABC had breached an alleged agreement or undertaking not to sue on the guarantees under certain circumstances.

(2) An allegation that EABC were unlicensed moneylenders under the English Moneylenders Act and therefore all the loan transactions were void and unenforceable.

Secondly the Colocotronis group of companies, 17 in all, along with the 3 plaintiffs here commenced an action in the English Courts to declare mainly

(1) that all the loan agreements and mortgages were null and void under the English Moneylenders Act as EABC were unlicensed moneylenders.

(2) that all the Pierre Hotel agreements, transactions and arrangements were null and void or illegal on the grounds that they had acted under duress or fraudulent misrepresentation on the part of EABC.

They also claimed various other consequential reliefs. These two actions are scheduled for hearing in the English Courts towards the end of this year.

With this brief summary let me now turn to the other two grounds relied on by EABC and UMTT in their motions. As I have already stated the plaintiffs only filed their statement of claim in this action on January 31, 1978. In it the plaintiffs have abandoned their claim that they were the beneficial owners of the said vessel and they now say in paragraph 3 of this statement of claim that they bring and prosecute this action for the benefit of the company that is to say "Navegantes". The company itself is unable to bring this action in its name for reasons alleged in paragraph 9 of the statement of claim. The gist of their contention is that EABC exercising the control they had wrongfully acquired through the arrangements arrived at the meeting in the Pierre Hotel in December 1975, have now secured apparent control over "Navegantes". That being so the plaintiffs alleged that though they hold all the shares of "Navegantes" and have the control of the company yet they are unable to get solicitors to act for the company on their instructions. On what is now alleged in paragraph 9 of the statement of claim and all the affidavits and other documentary evidence that have been placed before me by all the parties I am of the view that there are sufficient circumstances here for the plaintiffs to be allowed to carry on this action in a representative capacity for the benefit of "Navegantes". I find though many of the issues involved in this action would be identical to many of the issues involved in the action in English Courts where the plaintiffs and their companies are suing EABC, yet some of the reliefs they are claiming in this action are different from those they were seeking in their English action and could not have been properly sought in that action.

As regards UMTT one of their submissions is that they are *bona fide* purchasers for value of the said vessel in a sale under a registered mortgage and that their title therefore would not be affected by the moneylenders' point taken by the plaintiffs against EABC.

Now UMTT were aware of the English litigation between the plaintiffs and EABC and also about the not too recent Perth Court proceedings concerning the said vessel between these parties. The sale of the said vessel was not a direct mortgagee's sale to them. There was an intermediate buyer, namely Reefer Transportation Corporation, between them. Reefer Transportation Corporation was a Liberian registered company with close connections with EABC. If I am not mistaken EABC financed UMTT in the purchase of the said vessel. Even if UMTT were right on their stand on the moneylenders point yet on all what I have indicated here it would appear that the *bona fides* of UMTT would be very much in issue.

If these two motions were founded on only these two grounds I would have decided in favour of the plaintiffs but of course on appropriate terms.

In view of my finding on the third ground I order that the warrant of arrest, the writ of summons and all subsequent proceedings be struck out with costs.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Rodyk & Davidson; Selvadurai & Emmanuel.*

THE "ATLANTIC FAITH"
S.C. GIOTIS & ORS. v. THE "ATLANTIC FAITH" (OWNERS)

[O.C.J. (Kulasekaram J.) June 27, 1978]

[Singapore — Admiralty in Rem No. 264 of 1977]

Shipping Law — Limitation period — Maritime Conventions Act 1911 — Claim brought after two years — Whether action time-barred — Application for leave to bring action outside the limitation period — Maritime Conventions Act. 1911, s. 8.

Shipping Law — Collision involving two ships — Loss of lives — Negligence — Damages — Action brought by dependants of deceased seamen — Jurisdiction — Whether High Court had jurisdiction — High Court (Admiralty Jurisdiction) Act (Cap. 6), s. 4(3) & 4(4) — Civil Law Act (Cap. 30), s. 12 — R.S.C. 1970, O. 70 r. 4(7).

In January 1973, the ship "Atlantic Faith" collided with another ship the "Anson" in the Straits of Malacca as a result of which ten seamen lost their lives. On June 23, 1977 the plaintiffs, dependants of these deceased seamen brought an action against the owners of the "Atlantic Faith" (hereinafter called the ship). The plaintiffs claimed damages alleging that such damage was done by the ship in the collision and arose out of the negligence of the defendants or their servants or agents. On the same date the plaintiffs applied for a warrant of arrest for the ship which was duly arrested in Singapore. On June 27, 1977 on satisfactory guarantee provided by the defendants, the ship was released.

The defendants entered a conditional appearance on June 29, 1977 and applied by way of motion on July 4, 1977 for, *inter alia*, the writ of Summons and all subsequent proceedings to be set aside for want of jurisdiction under section 4(3) or section 4(4) of the High Court (Admiralty Jurisdiction) Act. They also alleged that the action was time-barred under the Maritime Conventions Act 1911 and that the warrant of arrest be set aside for non-compliance with Order 70 rule 4(7) of the Rules of the Supreme Court 1970. In the meantime the plaintiffs applied by motion for leave pursuant to section 8 of the Maritime Conventions Act to validate the commencement of this action outside the limitation period.

Held, allowing the plaintiffs' motion: (1) the plaintiffs had satisfied the court that prior to June 1977 they did not have a reasonable opportunity of arresting the ship in any of the jurisdictions indicated in the second limb of the proviso to section 8 of the Maritime Conventions Act 1911;

(2) a claim for damage done by a ship would clearly give rise to a maritime lien. That being so the exercise of